

IN THE SENATE OF THE UNITED STATES

MARCH 9, 1880.—Ordered to be printed.

MR. PENDLETON, from the Committee on Foreign Relations, submitted the following

REPORT:

[To accompany bill S. 1441.]

The Committee on Foreign Relations, to whom was referred the memorial of Sam. C. Reid, on behalf of the captain, owners, officers, and crew of the late United States private-armed brig General Armstrong, their heirs, executors, administrators, or assigns, report :

That the claim set forth in this memorial has been before the government, in one form or another, for sixty-five years. It has been the subject of much diplomatic correspondence with the government of Portugal. Its validity against that government has been asserted by Messrs. Monroe, Adams, Forsyth, Webster, Upshur, and Clayton, Secretaries of State under the administrations of Presidents Madison, Monroe, Jackson, Tyler, Polk, Taylor, and Fillmore. It has received the sanction of the Committees on Foreign Relations of the Senate and House of Representatives in the Thirty-third and the Thirty-fifth Congresses. It has received the favorable adjudication by a majority of the judges of the Court of Claims; and, although the decision was reversed on a rehearing, the reversal was also by a divided court on a question of technical *legal* right. It is now presented by the Secretary of State with the recommendation that an appropriation be made for its payment.

The event out of which the claim arose is most creditable to the valor and skill of American seamen, and in its remoter influences probably secured victory to the American arms at New Orleans. The accompanying papers will give the narrative, which, in romantic incidents, almost equals a tale of the imagination.

The history of the event and of the prosecution of the claim to which it gave rise is to be found in the diplomatic correspondence, the reports of the committees, the reports of the testimony and opinions in the Court of Claims, and the letter of the present Secretary of State.

From a thorough examination of these very voluminous documents, the committee finds the following facts:

First. That in September, 1814, the private armed brig General Armstrong was destroyed by the boats of three British men-of-war in the Port of Fayal, belonging to the neutral power of Portugal.

Second. That such destruction was in breach of the neutrality of Portugal.

Third. That the local authorities of the Azore Islands, as well as the government of Portugal, then residing at Rio Janeiro admitted to the

American minister immediately on the happening of the event that there had been a breach of its neutrality, and, asserting that fact to the British government, demanded satisfaction therefor in the most peremptory terms.

Fourth. That, after fruitless negotiations for many years, President Taylor, in 1850, made a peremptory demand upon the government of Portugal for the settlement of "incontrovertible claims of American citizens upon that government," among which was the claim for the loss of the brig General Armstrong. The government of Portugal, not admitting their validity, but *pro bono pacis*, offered to pay all the claims except this, which it proposed should be referred to the arbitration of a third power. President Taylor declined this proposal, insisted on immediate settlement of all the claims; and on an evasive answer being given, required the American minister to demand his passports and to leave Portugal in an American man-of-war which had been sent for him.

Fifth. A subsequent administration accepted the offer of the Portuguese government, received payment of the other claims, and submitted this claim to the arbitration of Louis Napoleon, then President of the French Republic. This submission was made without the knowledge of the claimants, and provided only "that copies of all correspondence which has passed between the two governments in reference to the said claim shall be laid before the arbiter."

Sixth. The interpretation put on this article by the State Department excluded all proofs and all arguments except those contained in the correspondence. And in point of fact, not only were the claimants prevented by the government from making such proofs and arguments, but the correspondence of the Fayal authorities and of the Portuguese government while at Rio Janeiro, admitting the breach of neutrality, was not laid before the arbiter.

Seventh. Louis Napoleon, in 1853, forty years after the event, decided against the validity of the claim on the ground of a doubt as to whether the British forces or the brig commenced the hostilities.

Eighth. Subsequently the committees of both Houses of Congress reported favorably on the claim, and referred it to the Court of Claims. The court reversed its opinion on a rehearing, and decided that these above-recited facts constituted no *legal* claim against the government of the United States, and thereupon the Senate passed a bill for the relief of the claimants, which received a very large majority of those voting in the House of Representatives; but by reason of the failure of a quorum did not become a law.

On these facts this committee concurs with its predecessors of the Thirty-third and Thirty-fifth Congresses, in holding that these claimants have good title against the government to be reimbursed for their loss, and accordingly report a bill authorizing the payment of the amount proven before the Court of Claims, to wit, \$70,739.00.

The committee does not doubt the power of the government to submit this claim, or any other claim, however just it may be, to arbitration, or even to surrender it, for reasons of State policy or public interest, or question the finality of the arbitrament; but it maintains with entire confidence and on grounds of the simplest justice, which is the highest expediency, that if the government, either to secure a peace or other advantage to itself, or to obtain the payment of other claims, or to subserve any public or private interest, surrenders the claim of any individual, or if for any such inducement it refers to arbitration any just claim, limiting the proof or the argument which might be made in its

behalf, or refusing or neglecting to produce the proofs which are within its knowledge and control, the government is bound *ex æquo et bono* to compensate his loss to that individual.

In this case the government did submit this just claim to arbitration, in order to secure the payment of other claims, did limit unduly the proofs and arguments to the diplomatic correspondence, and did neglect to lay before the arbitrator a part of the correspondence which was entirely within its control.

[46th Congress, 1st Session. Senate Mis. Doc. No. 13.]

Letter from the Secretary of State to the Chairman of the Committee on Appropriations, communicating information in relation to the application of the heirs of the claimants of the late private-armed brig General Armstrong, for compensation for the destruction of said brig by the British fleet, at Fayal, during the war of 1812.

DEPARTMENT OF STATE,
Washington, February 25, 1879.

SIR: I have the honor to acknowledge the receipt of your communication of the 8th ultimo, inclosing the memorial of Samuel C. Reid, in behalf of the claimants of the private-armed brig General Armstrong, and requesting "with as little delay as convenient, any recent information in the possession of" this "department, with its views as to the justice and equity of this claim."

In reply I have to state that by Executive reference of the 27th ultimo, to this department, of a communication addressed to the President by Sam. C. Reid in behalf of the claimants of the General Armstrong, relating to a certain claim growing out of the liability of the government under a treaty with Portugal of the 1st of September, 1851, submitting this claim to arbitration, the matter was laid before the law officer of this department for a thorough examination. His report, with the papers referred to, is submitted herewith for your information.

This department has no hesitation in approving of the justice and equity of the claimant's appeal to his own government.

The attending circumstances would seem to justify this department in recommending that the report, with the papers herewith inclosed, be presented to the Senate for the consideration and action of that body, with a view to an appropriation.

I have the honor to be, sir, your obedient servant,

WM. M. EVARTS.

Hon. WILLIAM WINDOM,
Chairman of the Committee on Appropriations, Senate.

DEPARTMENT OF STATE,
Law Bureau, February 8, 1879.

Subject: The case of the brig General Armstrong.

Letter of Sam. C. Reid, esquire, to the President, January 27, 1879.

On the 27th ultimo Mr. Reid addressed a letter to the President, the material point of which is this:

"After a full investigation of all the official correspondence, documents, and evidence in this case, should a favorable opinion be entertained by the Secretary of State, I would respectfully ask that his report be submitted to Congress, recommending the appropriation of a sufficient sum to pay the claimants, as proved before the Court of Claims."

Upon this letter is the following autograph indorsement of the President:

"Respectfully referred to the State Department for investigation, if required.
"R. B. HAYES."

The case has been investigated again and again during the last fifty years, and its history is well known in this department, in Congress, and in the Court of Claims. That history is contained in three printed volumes now before me, and which I have examined sufficiently to enable me to state with correctness the few preliminary facts essential to a consideration of what I think is the only point now in the claim.

The Armstrong was an American privateer during the war of 1812 between the United States and Great Britain, commanded by Capt. Sam. C. Reid. She put into the harbor of Fayal in September, 1814, for fresh water. The Armstrong was immediately

followed by three British men-of-war, attacked under the guns of the Portuguese fort by a fleet of twelve armed boats, which, after a most gallant fight, she defeated with terrible slaughter to the British and with a loss to the American brig of only one lieutenant and one man killed and two lieutenants and five men wounded. The next day one of the British ships, a frigate of 18 guns, was brought up within cannon range of the Armstrong, and after renewing the attack, Captain Reid, deeming further resistance useless, he, with his crew, after hastily disabling the brig, abandoned her. The British completed the destruction of the vessel by burning her to the water's edge.

This is the whole story of the outrage, but the benefits that ensued from it to the American cause are shown in the fact, clearly established, that this British fleet, intended for the capture of New Orleans, was kept busy by the Armstrong long enough to enable General Jackson to reach that city and save it.

Demand for reparation to the claimants was made on Portugal by this government, and was continued under every administration from President Monroe to Fillmore. Under the administration of President Taylor the demand was made in the most imperative diplomatic manner, saying that in the event of refusal the President would feel obliged to resort to the only alternative left him to secure an adjustment of the claim, after first taking the sense of Congress on the subject, and a United States frigate was dispatched to the Tagus to bring our minister home in the event of failure of the negotiations. Nothing was effected; the minister took his passports and came home. An offer had previously been made by Portugal to submit the claim to the arbitration of the King of Sweden. This had already been declined by our government. Soon after President Taylor died, and under the administration of President Fillmore, Mr. Webster being then Secretary of State, a convention was concluded (26th of February, 1851) between the United States and Portugal, submitting the question to the arbitration of the President of the French Republic. In November, 1852, his decision was announced (Louis Napoleon having then become Emperor) against the United States. Any one reading that decision, I think, must see that the officer charged with the examination of the facts by the President of the French Republic must have ignored in a great degree not only the evidence furnished by this government on the part of the claimant, but also the evidence furnished by the report of the governor of Fayal. Where the arbitrator found evidence to justify the statement in his decision that the Americans began the attack it is difficult to conceive.

The claimants were not allowed, under the terms of the treaty, to submit any evidence beyond the correspondence already on file in the Department between the two governments, nor were they permitted to present any argument. The submission was not with their consent. I know that it was contended on the part of the government, in the Court of Claims and in the debates in the Senate, that it was with their consent; but a perusal of the arguments *pro* and *con*, no less than the decision of the courts, as well as the passage of the bill for claimants' relief by the Senate—the same bill receiving a large majority vote in the House, but failing because a quorum was not present—all combine to dispel this idea of the claimants' consent. All these facts are verified by the documents before me, and are carefully summarized in a memorandum accompanying Mr. Reid's letter, which I submit herewith.

Now, as I have already stated, there is but one point in the case for determination, namely: Have the United States, under all the circumstances, incurred an obligation to make reparation to their own citizen, the private claimant? In my opinion such an obligation does rest on this government, and even if it be admitted that the result of the international submission is a legal bar which this government may plead against Reid's claim on the United States (which I do not admit it is), still the obligation rests on higher grounds between the government and its citizen, and it is bound, under the extraordinary circumstances of this case, in equity, in morals, and in honor, to discharge that obligation. Congress alone can do so, and the question for the Secretary's decision is whether he can with propriety comply with the claimant's request, namely, to accompany the presentation of the claim to Congress with a letter recommending an appropriation for its payment. I am sorry to have to say that the precedents and usages of the department are against such a course; such recommendations, when made at all by the Secretary of State, are only made upon a call from Congress or from a committee of either house having the claim before it. This is the invariable rule in regard to private claims.

Respectfully submitted.

HENRY O'CONNOR.

I now learn, since the above report was prepared, that Senator Windom, chairman of the Committee on Appropriations of the Senate, had addressed a letter to the department asking for the information and suggestions desired by Mr. Reid. This may obviate the objection stated in the conclusion of the report.

HENRY O'CONNOR.

ABSTRACT OF THE OFFICIAL DIPLOMATIC CORRESPONDENCE IN THE CASE OF THE UNITED STATES PRIVATE ARMED BRIG GENERAL ARMSTRONG ACCOMPANYING THE LETTER OF THE SECRETARY OF STATE, WITH OTHER DOCUMENTS.

To Hon. WM. M. EVARTS,

Secretary of State :

SIR: I have the honor to submit to you the following detailed statement of all the facts connected with the case of the claimants of the late United States private armed brig General Armstrong, destroyed by a British fleet in the neutral port of Fayal during the war with Great Britain in 1812-14, with a reference to all the official correspondence, documents, and evidence in the case, and the action of Congress and the Court of Claims thereon.

This case was originally a claim against the Government of Portugal for permitting the violation of the neutrality of her port by a British fleet which attacked the General Armstrong and destroyed her after the most unparalleled defense to be found in naval history.

The original correspondence between the Governments of Portugal and England, with the report of the governor of Fayal to his government, and his correspondence with the commander of the British squadron, as communicated by the minister of foreign affairs of Portugal to Mr. Sumter, our minister at Rio de Janeiro, the then seat of government, is printed in Sen. Doc. No. 14, 1st sess. 29th Congress.

From this correspondence it appears that on the 28th September, 1814, the governor of Fayal communicated the full particulars of this affair to the minister of state of Portugal, in which he states: * * * "We are now for the first time made to witness a horrible and bloody combat, occasioned by the madness, pride, and haughtiness of an insolent British officer who would not respect the neutrality maintained by Portugal in the existing contest between his Britannic Majesty and the United States of America." (See p. 12 of Doc. 14.)

In note No. 4 of the governor of Fayal to the commander of the British naval forces, dated one o'clock at night, September 27, 1814, he states: * * * "I see the motives which induced you to violate the neutrality of this port. * * * I must, however, assure you, sir, that from the accounts which I have received it is certain that the British boats were the first to attack the American schooner." (p. 18, Doc. 14.)

In the dispatch of the Marquis de Aguiar, minister of foreign affairs of Portugal, dated Palace of Rio de Janeiro, December 22, 1814, to Lord Strangford, the British minister residing at Rio, it is stated:

"His excellency will likewise observe the base attempt of the British commander, at the time he commenced the unprovoked attack on the American privateer, to attribute those violent measures to the breaking of the neutrality on the part of the Americans, in the first instance, by repelling the British armed barges that were sent for the purpose of reconnoitering that vessel, advocating with the most manifest duplicity that they were consequently the aggressors. * * * His Royal Highness, at the same time that he has directed his minister at the court of London to make the strongest representations before the Prince Regent of the United Kingdom, and to require satisfaction and indemnification not only for his subjects, but for the American privateer, whose security was guaranteed by the safeguard of a neutral port, orders it to be signified to his excellency Lord Strangford, that he may inform his government of the unfavorable impression the conduct of that British commander has caused in the mind of His Royal Highness," &c. (Doc. 14, p. 21.)

In transmitting this correspondence to Mr. Sumter, the Marquis de Aguiar, in his letter of December 23, 1814, says:

"Not a moment's delay ensued in causing to be addressed to the British minister at this court the note which is confidentially communicated by a copy to your excellency; at the same time he has directed his minister in London to make the reclamation so serious an offense requires." (Doc. 14, p. 22.)

On the 3d January, 1815, Mr. Monroe, Secretary of State, at the instance of President Madison, instructed Mr. Sumter to make a formal demand on Portugal for the destruction of this vessel, and said:

"You are requested to bring all the circumstances of the transaction distinctly to the view of the Portuguese Government, and to state the claim which the party has to immediate indemnification." (Doc. 14, p. 20.)

On the 14th March, 1818, Mr. John Quincy Adams, Secretary of State under Mr. Monroe, in a letter to the Portuguese minister at Washington, stated:

"Of the facts of this case there is and can be no question, having been ascertained not only by the statements of the injured parties, but by the official reports of your own commanding officer. It is hoped your government will, without further delay, grant to the sufferers by that transaction the full indemnity to which they are by the laws of nations entitled." (See Ex. Doc. No. 53, p. 13, 1st sess. 32d Cong.)

From the records of this department it would appear that no further correspondence was had with the Portuguese Government in relation to this claim for sixteen years,

until the second term of President Jackson, when, on the 20th May, 1835, Mr. Asbury Dickins, of the Department of State, in his letter of instructions to Mr. Cavanaugh, our chargé at Lisbon, dated May 20, 1835, urged the prosecution of this claim against the Government of Portugal as being well founded, and said:

"The Portuguese authorities at that place having failed to afford this vessel the protection to which she was entitled in a friendly port, which she had entered as an asylum, that government is unquestionably bound by the law of nations to make good to the sufferers all the damages sustained in consequence of the neglect of so obvious and acknowledged a duty."

On the 22d October, 1835, Mr. John Forsyth, Secretary of State, informed Mr. Cavanaugh that "it is not thought necessary to add anything to the instructions which have heretofore been given you upon this subject," referring to the above dispatch of Mr. Dickens.

On the 2d July, 1836, Mr. Forsyth informed Mr. Cavanaugh that—

"The claimants, as you may well suppose, are becoming impatient, and making repeated complaints that their rights are still withheld. If a final arrangement should not have been completed before this dispatch reaches you, it is expected that you will exert yourself with increased energy to overcome the procrastinating spirit which has hitherto been manifested by the Portuguese Government, and to bring the matter to a speedy conclusion."

On the 21st September, 1836, Mr. Forsyth stated to Mr. Cavanaugh that—

"It is not necessary that you should wait for any further opinion of the department upon the claim of the owners, officers, and crew of the privateer General Armstrong. You have already been instructed as to the general character of this claim, and the principle upon which it is founded." (See pp. 27, 29, 31, Doc. 14.)

On the 24th May, 1837, Mr. Cavanaugh wrote to Mr. Forsyth that—

"I am informed that in 1814 or 1815 General Sumter, our minister at the Portuguese court while it was established at Rio de Janeiro, made representations of this case, and that a correspondence thereon ensued between the Portuguese Government and that of Great Britain, but I have no knowledge of the result, and there is no record of the translation in this legation."

On the 4th September, 1837, Mr. Cavanaugh stated to Mr. Forsyth that—

"I have already stated that no written reply has been received to the note which I addressed to the minister of foreign affairs on the 17th of February last. * * * I have lately been informed by a gentleman * * * that a correspondence was had with the British minister in relation to the destruction of the General Armstrong, but he was unable to say how it resulted. I have already stated that there are not in this legation any traces of the correspondence." * * *

On the 6th April, 1838, Mr. Cavanaugh again wrote Mr. Forsyth that—

"I have repeatedly urged for an answer to my note of the 17th of February, 1837, presenting the claim of the owners, officers, and crew of the General Armstrong. * * * I have as yet no information of what was done by General Sumter, our minister at Rio de Janeiro in 1814 or 1815, who presented the case to the consideration of the Portuguese Government, then established there."

On the 14th April, 1840, Mr. Forsyth, Secretary of State under Mr. Van Buren, in reply to a letter of inquiry from Mr. Sam. C. Reid, jr., stated that—

"Mr. Cavanaugh's instructions require him to urge the call upon Portugal whenever there is room for expecting a favorable result." (Doc. 14, p. 37.)

On the 15th January, 1842, Mr. Webster, Secretary of State under Mr. Tyler, instructed Mr. Washington Barrow, chargé at Lisbon, to renew the demand for this claim. (Page 40, Doc. 14.)

On the 3d August, 1843, the minister of foreign affairs of Portugal, Señor de Castro, made a final reply to Mr. Barrow, wholly denying the liability of that government, and charging the violation of the neutrality of their port upon the Americans. (Doc. 14, p. 48.)

On the 10th January, 1844, Mr. A. P. Upshur, Secretary of State, in reply to a letter of Mr. Sam. C. Reid, jr., dated December 15, 1843, requesting that a proper response be made to the letter of Señor de Castro, stated:

"Argument and impunity have been exhausted, and this government can see nothing in the circumstance to justify or warrant it in having recourse to any other weapons."

It further appears that subsequently, by a resolution of the Senate, Mr. President Polk, on the 15th December, 1845, communicated all the correspondence called for in this case (among which was the supposed lost correspondence), as contained in Sen. Doc. 14, 1st sess. 29th Cong., which was referred to the Committee on Foreign Relations, who, in their report, No. 349, May 19, 1846, referred the case back to the Department of State, with a recommendation for further action.

On the 20th April, 1849, Mr. John M. Clayton, Secretary of State, under instructions from President Taylor, renewed the prosecution of this case in a dispatch to Mr. George W. Hopkins, chargé d'affaires at Lisbon, and stated:

"The President considers his accession an auspicious moment to make one more appeal to Portugal. The injustice done us, and the delay of redress, would justify the severest animadversion in speaking of these outrages, which of late seem to have increased in number and magnitude in a direct proportion to the impunity with which they have been hitherto inflicted. * * * The oldest case of wrong, and the most remarkable, is that of the privateer General Armstrong, Capt. S. C. Reid, destroyed in 1814 by a British squadron, under the guns of the Portuguese fortress which protects the harbor of Fayal, after a defense as gallant and memorable as any act recorded in naval annals. * * *

"It is under these circumstances that the President has resolved to make one more attempt to procure satisfaction for the American claimants, and to assert the national honor; and in this resolve it will be your duty to convince the Portuguese Government that he is in earnest, and will not be turned aside from his purpose. You will impress upon Portugal this idea, that on entering upon the duties of his high office as Chief Magistrate of the United States, the President determined that he would assert the rights of his fellow-citizens upon foreign governments, proceeding upon the principle often avowed by our government, 'to make no demand not founded on justice, and to submit to no wrong.'"

(See Ex. Doc. 53, 1st sess. 32d Cong., letter G, p. 16, containing the subsequent diplomatic correspondence in this case.)

On the 28th June, 1849, Mr. Hopkins, in obedience to these instructions, fully presented the case to Count Tojal, minister of foreign affairs, and for the first time set forth the original correspondence of the Marquis de Aguiar to the British and American ministers. In concluding this dispatch, Mr. Hopkins said:

"Thus stands the claim of the owners, officers, and crew of the American privateer General Armstrong, which has been the subject of a fruitless negotiation and harassing delay for more than thirty years. * * * The President of the United States sincerely desires to cultivate peace with every nation and people, but he will never compromise the dignity of the republic nor abandon the just rights of his fellow-citizens to attain any end." (Doc. 53, letter H, p. 20.)

On the 9th March, 1850, Count Tojal, in his reply to Mr. Jas. B. Clay (who had succeeded Mr. Hopkins), made the following admissions:

"In 1814, the Government of his Britannic Majesty, through Lord Bathurst, then minister of foreign affairs, directed Mr. Canning, ambassador at Lisbon, near the regency, to give the Portuguese Government a verbal satisfaction for the occurrence which had taken place, and which resulted in the destruction of the privateer General Armstrong in the port of Fayal, &c. Finally, in 1817, Lord Castlereagh, who was then minister of foreign affairs to His Britannic Majesty, sent the sum of £319 to the inhabitants of the village of Da Horta, as a compensation for the damage which the balls of the brig *Carnation* had caused to their dwellings, refusing at the same time, in the most positive manner, to indemnify the owners of the privateer, on the ground that the latter had been the aggressor." (Doc. 53, letter L, p. 49.)

On the 8th March, 1850, Mr. Jno M. Clayton, Secretary of State, informed Mr. Jas. B. Clay that—

"In regard to the reference of our claims to an arbiter which has been indicated, the President has directed me to say that no such course will under the circumstances receive his sanction, and this for reasons too obvious to need enumeration. * * * This dispatch will be sent to the Secretary of the Navy, who will issue the proper orders to the commander of the Mediterranean squadron to proceed with it to Lisbon and deliver it into your hands, and then to await the decision of the Portuguese Government for the space of twenty days," &c. (Doc. 53, letter U, p. 68.)

On the 30th of April, 1850, Mr. Clayton, in reply to Mr. Figanière, the Portuguese minister at Washington, urging the reference of the claim to the arbitration of a third power, said:

"The undersigned, in conclusion, is compelled to add that should the Portuguese Government persevere in the refusal to adjust and settle what we believe to be the incontrovertible claims of American citizens upon that government, the only alternative left to the President will be immediately resorted to—the submission of the whole subject to the decision of the Congress of the United States, whose final determination as to the mode of adjustment will have all its appropriate and legitimate influence upon the course of the Executive."

On the 6th of July, 1850, Count Tojal, in reply to the peremptory demand made by the Government of the United States, made the following proposition to Mr. Clay:

"The Government of Her Majesty, animated by the same desire which the Government of the United States profess to maintain, without interrupting relations of good harmony and intelligence between the two countries, yields to the force of circumstances, and again, without reverting to the justice or injustice of the claims presented by the Government of the United States, and only *pro bono pacis*, offers to pay the said mentioned claims, amounting to \$91,727, according to Mr. Clay's account, with the only exception of that relating to the privateer General Armstrong, which the under-

signed cannot deviate from the proposal heretofore made to submit to a third power," &c. (Doc. 53, letter Y, p. 73.)

On the 7th July, 1850, Mr. Clay in reply stated:

"In answer to the proposition of his excellency, the undersigned has the honor to say that the instructions of his government do not allow him to entertain any proposition which has not for its object the adjustment and final settlement of all said claims without exception." (*Ibid.*, letter Z, p. 78.)

On the 10th July, 1850, Count Tojal informed Mr. Clay that, under the existing circumstances, Her Majesty's Government has no other means of obtaining proper justice than by appealing *directly* to the Government of the United States, &c.

On the 11th July, 1850, Mr. Clay informed Count Tojal:

"It has now become the duty of the undersigned to make a formal demand for his passports, in order that he may return to the United States," &c.

On the 13th July, 1850, Count Tojal replied:

"In compliance with Mr. Clay's request, the undersigned, although seriously grieved at the occurrence, has the honor of inclosing to him his passports," &c.

On the 5th September, 1850, Mr. Fillmore having succeeded President Taylor, who died on the 9th July, Mr. Webster, Secretary of State, informed the Portuguese minister at Washington, Señor Figanère, that—

"The President instructs me now to say that, sincerely wishing to preserve relations of amity with Portugal, and to bring pending questions to an immediate close, the Government of the United States accepts Count Tojal's offer, in behalf of his government, to pay the several claims as stated in Mr. Clay's note, and the proposition made by the same authority to refer the case of the General Armstrong to arbitration." (Doc. 53, p. 112.)

On the 5th September, 1850, Mr. Sam. C. Reid, jr., "sole and only authorized agent of the claimants of the brig General Armstrong," wrote to Mr. Webster from New Orleans:

"I perceive it is proposed to refer the claim of the owners of the brig General Armstrong to the King of Sweden for arbitration. I hope the Department of State has made no final arrangements in this case under the present circumstances; and I desire that it may be left open until I can have a conference with you on the subject. * * * I hope no steps will be taken which will compromise the rights of the claimants until I can have the pleasure of seeing you."

On the 13th September, 1850, Mr. Webster replied to Mr. Reid, that "the proposition to refer the claim of the General Armstrong to the King of Sweden or any other friendly power, chosen by the United States and Portugal, has already been accepted by your government, and the fact of acceptance formally announced to Portugal, through its diplomatic representative here."

On the 19th March, 1851, Mr. Webster informed Mr. C. B. Haddock, who had been appointed chargé to Lisbon in place of Mr. Clay, that—

"The convention providing for the payment and settlement of the claims of American citizens against the Government of Portugal, &c., has agreed upon and concluded on the 26th ultimo, between Mr. De Figanère and myself, and submitted on the 28th ultimo to the Senate, which advised and consented to its ratification on the 7th instant." (Doc. 53, letter E C, p. 84.)

On the 20th March, 1851, Mr. Webster instructed Mr. Haddock that—

"When the consent of the arbiter, whichever of the two it may be the President of the French Republic or King of Sweden) shall have been obtained, you will proceed to carry into execution the stipulation of the third article of the convention, viz, to compare and authenticate, jointly with the Portuguese Government, the copies therein specified. You will understand, of course, that these copies are *limited* to such communications as have passed between the American legation and the Portuguese Government at Lisbon, and between this department and the Portuguese legation at Washington," &c.

On the 7th July, 1851, Mr. Sam. C. Reid, jr., then in Washington, addressed a note to Mr. Webster, inclosing "a detailed statement of the facts in the case of the brig General Armstrong," &c., "for the purpose of a copy of the same being transmitted to our minister at the court or seat of government of the power which shall be selected by the Governments of Portugal and the United States to arbitrate this claim," &c., with a request "that a copy of all the documents therein referred to may accompany this statement to our minister at the court which shall be selected by the two governments as soon as it is made known to the department, in order that he may be able to represent this case in the strongest light to the high power which shall be called on to arbitrate this question," &c. (See Rep. Ct. Claims to House, No. 159, p. 24.) This request was verbally refused, on the ground that the terms of the treaty did not permit of it.

On the 12th July, 1851, Mr. Webster wrote Mr. Haddock that—

"In my dispatch of 20th March last, you were instructed, after having signed the protocol, as provided for by the stipulations of the convention with Portugal, to compare and authenticate, jointly with the Portuguese Government, copies of all the cor-

respondence which has passed between the American legation and the Portuguese Government at Lisbon, and between this department and the Portuguese legation at Washington, respecting the claim of the General Armstrong, with a view of submitting them, together with the papers, to the arbiter."

To provide, however, against the omission of any important part of the earlier portion of the correspondence, I mean that which passed in 1814 and 1815 in Rio de Janeiro, where the court of Portugal at that time resided, and which it could not have been intended to exclude, I transmit to you herewith a printed copy of the correspondence, as communicated to Congress on the 15th December, 1845. (Doc. 53, letter K K, p. 86.)

On the 17th of July, 1851, Mr. Haddock informed the Secretary of State—

"That on the 9th instant I met Her Majesty's minister of state and secretary for foreign affairs of the foreign office for conference upon the subject of the protocol. Two slight alterations in the form sent to me from the Department of State were suggested by his excellency, to which I did not think it proper to object. * * * With these alterations, the instrument was signed and sealed by us on the day of conference." (Doc. 53, letter L L, p. 87.)

On the 29th September, 1851, in answer to Mr. Reid's requests of the President to permit him to present an argument to the arbiter in behalf of the claimants, Mr. J. J. Crittenden, Acting Secretary of State, replied:

"It is not competent for this department to invest you with any manner of authority to present an argument in the case of the General Armstrong; nor, indeed, to interfere in any way with the mode of submitting the case to the arbiter, provided for by the third article of the convention."

On the 8th January, 1853, Mr. Reid addressed a letter from New Orleans to Mr. Everett, Secretary of State, stating:

"Telegraphic news had been received in this city to the effect that Louis Napoleon (to whom was referred the case of the claimants of the brig General Armstrong against the Government of Portugal) has decided the case against the claimants. * * * This case was submitted to arbitration by treaty stipulations between the Governments of the United States and Portugal without the knowledge or consent of the claimants, after a peremptory demand for the claim had been made; and I wish this protest to appear patent on the records of the Department of State of the United States, so that the rights of the claimants against their own government shall not be prejudiced or compromised. * * * Under these circumstances I hereby most solemnly protest, on behalf of the owners and claimants of the brig General Armstrong, against the award made by Louis Napoleon in favor of the Portuguese Government; and further protest against the Government of the United States accepting the same as final and decisive against the rights of the claimants."

"The case of the Northeastern boundary, submitted to the arbitration of the King of the Netherlands, whose award was refused by President Jackson, is a sufficient precedent, in my humble opinion, for the President to act upon, to say nothing of the gross injustice to the claimants, and the settlement of a principle entirely at variance with the recognized policy of this government and international law."

On the 11th February, 1853, Mr. Everett replied to Mr. Reid that—

"The award of the arbiter in this case must be considered as decisive."

On the 19th January, 1854, the claimants presented a memorial to Congress, with the argument submitted to the Department of State on 7th July, 1851, in this case, which was referred to the Committee on Foreign Relations of the Senate (see Mis. Doc. 14, 1st session 33d Congress), and also to the Committee of Foreign Affairs of the House; which unanimously reported in favor of the claimants. (See Senate Report 157 and House Report 139 of the 1st session 33d Congress.)

On the 26th of January, 1855, this case was fully debated in the Senate. (See Congressional Globe, 27th January, 1855.) On that occasion Mr. Bayard said:

"Well, sir, looking on that decision as an atrocity throughout, unsustainable by any known principle of law, but a perversion of facts from beginning to end, I cannot believe that it would have been made if our government had not rejected the right of the claimant to be heard by his counsel, or by its own agents, before the authority deputed by the French Emperor to examine the case. I therefore conceive that this party has lost a decision in this case from what I term the gross neglect of our government, arising from a misconstruction of a treaty which does not preclude the right to be heard. * * * In this country no man who wishes to be heard in defense of his rights should be refused a fair opportunity to be heard in vindication of those rights when they are to be decided upon. It is on this ground that I shall vote in favor of the claim as an obligation on the government."

"Mr. SEWARD. Mr. President, I do not think there is any necessity for any intricate refinement upon this subject. I do not believe there is any great dispute in point of fact between gentlemen who take different views on the question about the principles of the law of nations applicable to it. It seems to me to be a plain, simple question, and one which is to be decided upon the principles of common honesty and common sense. * * * Now, I submit to the honorable gentleman from Maine, and to every

honorable Senator, whether there is ever such a thing as an arbitration in which all that is required of the arbitrator is to decide and not to hear and try? There has been no hearing, no trial of this claim, before the arbitrator. The government either did or did not stipulate that there should be a hearing and trial. If it did so stipulate, it has failed either to appear itself by its minister or to notify the claimant, so that he could appear before the arbitrator, make his allegations, give his proofs, and submit his case for the arbitrator. No such thing appears in the case; but, on the contrary, the government did not take care to stipulate for such hearing, and the consequence has been that this claim of her citizens, large to him, small to her, was carelessly and heedlessly thrown before the President of France, and probably as carelessly and heedlessly passed upon, in entire disregard of a party in every human tribunal—that of hearing the allegations and proofs of the parties. This is the state of the case. It has been disposed of in that way. Somebody is to blame for it.

“Mr. CLAYTON. Well, sir, at this crisis, when all the other claims were about to be paid and I verily believe this was also about to be paid, the President died. Within three days after my successor went into office he agreed to refer the matter to the Prince Louis Napoleon. I know that, because he called upon me, and in the course of the conversation notified me that he had made that arrangement with Mr. Ferganière, the Portuguese minister. * * * I thought the circumstances of the case so clear against that government, and her conduct so atrocious, that there ought to be no reference of a claim which was so clearly right. * * * Now we know that the American minister at Paris, Mr. Rives, never appeared before the arbitrator; he never made a statement in behalf of the claimants, nor took any interest in the case, because he had no instruction to do so. On the other side of the matter, the Portuguese government was sustained by its minister and counsel. It was a one-sided hearing, such as that we could hardly expect any justice from it. Now, having handled the matter in that manner, I am compelled, as a just man, to say that in this case the claimants have a clear right to compensation from the United States. That is my deliberate opinion.

“Mr. WELLER. Mr. President, the first question is, was this a just demand against the government of Portugal? Is there a Senator within the sound of my voice who does not believe that it was a just, fair, and honorable demand against the government of Portugal? Does any man believe that this was not such a violation of the law of nations as justified our government even in threatening war unless the claim was duly paid? If it was a just demand—and you have the declaration of every administration from the date of the transaction to this to that effect—then this government, by entering into a negotiation which prevented these parties from recovering that demand, has placed itself in the position of Portugal, and is now liable for the payment of the claim. Sir, when I say this, I lay down the public law which is recognized among all civilized nations in the very language in which it was recently uttered by the lord high chancellor of England. (Case of *De Bode vs. Regina.*)

“Mr. A. G. BROWN. My own clear judgment is that the government, having been originally liable, and our government having discharged that liability by its mismanagement of the case, has obliged itself to make indemnity to these claimants, and upon that broad principle I shall place my vote. I will not follow the lawyers through all the technicalities of this case, seeking a little technical objection here and another somewhere else, by which we may discharge ourselves from an honest obligation to these parties. Sir, who is the claimant, and what were the services rendered by him in the beginning of the claim? * * * When this transaction first occurred, if history speaks truly, it electrified every American heart from one extremity of the Union to the other. * * * Sir, Captain Reid is not known to this country alone as the commander of the armed brig in this conflict. Fix your eye as you come to the Capitol upon that flag which waves over us to-day, and ask who is its author? Sir, the author of that flag, the man who devised its present form, as adopted and established by Congress in 1818, is the claimant in this case. It was under his humble roof, by the hands of his wife and daughters, that the first flag of this design that ever floated over this Capitol was manufactured. In every way he has manifested his devotion to his country, his deep and lasting devotion to America, to her institutions, and to her honor, not only toiling in season but out of season in her defense; and shall we, the representatives of the state, stand here to-day caviling upon little miserable technicalities of the law, such as lawyers resort to in court, to avoid the payment of honest claims?

“Mr. CASS. Now, sir, the attack upon the General Armstrong was a most atrocious violation of the laws of nations on the part of England. Nobody doubts that. * * *

* I wonder myself that it was ever submitted to arbitration. So far as respects the general principle, I should just as soon think of submitting to arbitration a question of jurisdiction over the city of Washington as to submit the question of responsibility of the Portuguese Government for this atrocious violation of the law of nations.

“Mr. HOUSON. Where the rights of an individual are concerned, I would demand nothing but what was right and I would submit to nothing that was wrong, no matter from what source it comes. Upon that principle, and believing that the United

States are responsible to these individuals for having compromised their rights without their full assent and acquiescence, and without an opportunity to exhibit their demand fairly before the umpire, I shall vote for the bill."

On the 2d February, 1855, the debate in the Senate on this bill was continued. Mr. Benjamin, of Louisiana, contended at length that the claimants were estopped by the award under the treaty, and who was replied to by Mr. Seward:

"Mr. President, this case of the owner of the privateer brig General Armstrong has always seemed to me so clear, that I have never felt myself called upon to elaborate an argument in its support, although I have cheerfully supported it. * * *

"The honorable Senator from Louisiana admits that there is so much merit in this case that if it was put upon the ground of justice and liberality he would cordially support it. He only fears that it may become a precedent.

"Mr. BENJAMIN. I beg the Senator's pardon. I said on the ground of gratitude.

"Mr. SEWARD. On the ground of gratitude. The same defense which the Senator has made for the Government of the United States against this claim would have been a good defense for the people of the United States against the claim in favor of General Lafayette, who was allowed the sum of \$200,000 for his services in the Revolution. The same defense would be equally good against the allowing of a single one of the thousands or tens of thousands of grants of bounty lands, and against the whole pension system of the United States. The dangers which Captain Reid incurred and the losses which he sustained were incurred in the service and in the defense of our country; and it is always right if the government is able, and can do it in justice to other citizens, to acknowledge and discharge the duty of gratitude which the honorable Senator admits. * * * If all these circumstances shall occur again, I think this precedent will be one of the most valuable in our history; but we have no reason to apprehend that this will be extended into a precedent for any future claims of this kind. On the other hand, the precedents which, of all others, I least like to see on our statute-books are the precedents of refusing a just indemnity to citizens of the United States whose property has been lost and whose lives have been periled in the defense of the liberties and independence of the country."

"Mr. CLAYTON. * * * Sir, I know that these men are not all to whom this government is bound to look when acting upon this matter. Sailors in future wars will regard the precedent established, and the course of action of their government in relation to this privateer, with anxious attention. They will see, if the bill passes, that this government is determined to maintain their rights in neutral ports; that if, by means of an error, those rights have been sacrificed, the government will make the acknowledgment of the error and pay them. I hold that it is a great principle which is involved in this bill, so far as relates to our naval marine. No case more brilliant than this can ever occur again. Aye, sir, I say now, as I have said before, that I do not think this will be exactly a precedent for anything else, for I do not believe there will ever occur again an instance equal to this, exhibiting the courage, patriotism, perseverance of American sailors under the most desperate circumstances. Surrounded by a British squadron containing thousands of troops, transports, one or more line-of-battle ships, frigates, sloops of war, closing up the harbor, most men, seeing the force about to be opposed to them was overwhelming, would have abandoned the flag and gone ashore; but what did they? Sir, with a perfect knowledge that the odds against them were as twenty to one, they resolved to stand by the flag while they had life. Shall we desert them now, and ignore their claim for the property lost in our defense?"

This demand of the claimants is based strictly upon the rights of *justice*, not *gratitude*, the claim being only for the losses actually sustained by the owners, officers, and crew of the vessel. But if a precedent either for the gratitude or justice of Congress be demanded, an example may be found by the British Government, at least worthy of consideration.

In the great naval battle off Cape St. Vincent, in 1797, between a Spanish fleet of twenty-seven ships of the line and twelve frigates, and a British squadron of fifteen ships of the line, seven frigates, and two sloops of war, the British acknowledged a loss of only seventy-three killed and two hundred and twenty-three wounded, yet in that conflict, with such a tremendous force engaged, the English did not lose as many men *killed* as they did in trying to capture a little brig of only seven guns and ninety men. Admiral Jervis, of the British fleet, having defeated the Spaniards, was created an earl by the King of England, and granted a pension of \$25,000 a year.

A later precedent may also be found in the act of Congress of the 17th of April, 1872, granting to Rear-Admiral John A. Winslow, and the officers and crew of the United States steamer Kearsarge, one hundred and ninety thousand dollars for the capture and destruction of the Confederate war steamer Alabama, on the 19th of June, 1864.

The following letter from the late Governor Shelby, of Kentucky, written after the news of the battle of the privateer General Armstrong with the British fleet at Fayal, in 1814, had become fully known, bears with great force, at this time, upon the facts attending this celebrated case, and is most pertinent to the issue:

"FRANKFORT, KY., May 8, 1815.

"To Capt. SAMUEL C. REID,

"*Late Commander of the United States Privateer General Armstrong :*

"SIR: The return of peace to our country, upon honorable terms, with a national character exalted in an eminent degree, affords us leisure to review the various conflicts in which that character has been developed.

"On the ocean, where we had most to dread, we have found a rich harvest of glory, and the American tars have secured to themselves the admiration of the world. To the officers and crews of our public vessels much is due; and the nation through its public functionaries, and in other forms, has fully demonstrated its gratitude. We are not less indebted to the officers and crews of our private armed vessels. Instances of talent, skill, discipline, and a determined, unconquerable bravery have been manifested by our privateersmen, when their situations might have presented to ordinary minds sufficient inducement for avoiding the contest. Nothing but a generous and noble patriotism could have led to such deeds. I have no reason to believe that the nation at large is not fully impressed with the gratitude due to this class of our heroes. But I have regretted that there have been so few demonstrations of that sentiment. You will, therefore, although a stranger to you, permit me for myself, individually, and on behalf of the State over which I have the honor to preside, to assure you that the conduct of yourself and your officers and crew in defense of the General Armstrong in the port of Fayal merits the first applause of the nation, and is duly appreciated by our citizens.

"No one conflict during the war has placed the American character in so proud a view.

"The baseness of the attack in a neutral port, the overwhelming force of the assailants, the small prospect of success to yourself and crew, and the unparalleled disparity of loss, demonstrated a combination of talents, skill, and heroism seldom equaled and never surpassed. I trust our government will lose no time in demanding a fair remuneration for the vessel and her apparel, &c., and that it will be prosecuted with effect.

"May you, your officers and crew, long live to enjoy the laurels you have so nobly won.

"I have the honor to be, with high consideration of respect and esteem, sir, your most obedient servant,

"ISAAC SHELBY."

By a resolution of both Houses of Congress this claim was finally submitted to the Court of Claims, then just established.

On the 17th of March, 1856, after a thorough investigation of all the facts and evidence before the court, and arguments by counsel, Chief Justice Gilchrist delivered the opinion of the court in favor of the claimants, Justice Scaburg concurring, on the following points, Justice Blackford dissenting:

"1st. That the English forces, by sending out their boats with the intention of making an illegal capture, first violated the neutrality of the Portuguese port, and that the Portuguese authorities having failed to protect the Americans, Portugal was bound by the law of nations to make the claimants pecuniary compensation.

"2d. That the United States solemnly rejected the proposition of Portugal to submit this case to arbitration, on the ground that it was not proper under the circumstances, and that the facts would not justify a submission. That afterward a succeeding administration accepted the proposition to arbitrate this claim, in consideration of a bonus, *pro bono pacis*, to pay a number of other claims without reference to their justice or injustice.

"3d. That the case was submitted to arbitration without the knowledge or consent of the claimants; that the important evidence containing the admissions of Portugal and England, in the correspondence had at Rio de Janeiro in 1814 and 1815, with the American minister, and the letter of the British consul at Fayal avowing the intention of the commander of the British squadron, was wholly excluded and omitted, and that the claimants were refused the privilege of being heard by written argument before the authority which was to decide upon their rights.

"4th. That the award of the Emperor Louis Napoleon exceeded the submission, and was void because it did not settle the matter in dispute and the matter submitted, which was a point of public law, but determined the case on a question of fact not submitted."

In asserting the liability of this government to the claimants, upon the mutual obligations existing between the government and its citizens, the court said:

"Our country is bound to protect our rights as individuals; and if this protection be not afforded us, she is bound to render us such an equivalent as it is in her power to bestow. Against another nation she is bound to assert our claims, for she alone can meet such an antagonist on equal terms. If she neglects the sacred duty of protecting us in our rights, she is bound to make us compensation. These principles are no recent discoveries. They are as old as the institution of civil government. Their

recognition by a state is the surest and firmest bond by which the citizen is attached to his government and his country. (See opinion of Court of Claims in report to Ho. of Rep., pp. 52 and 53.)

In the dissenting opinion of Justice Blackford, denying the political responsibility of this government to the claimants, he said:

"Our government never had any concern in the claim except that, to oblige the claimants, and on their repeated and earnest solicitations, it made great efforts for many years to obtain for them from Portugal the amount they claimed. These efforts failed of success only because the claimants did not furnish sufficient evidence to satisfy the arbitrator that their claims were valid. (See special report of this case, p. 224.)"

On a rehearing of this cause Justice Scarburg, who had concurred in the previous decision of the court, that the United States had compromised the rights of the claimants by accepting a bonus to refer this case to arbitration, reverses his opinion on this point, on the ground that the terms of the treaty were conclusive against the claimants, and said:

"The petitioner alleges that the Government of the United States made a treaty with Portugal, whereby she compromised the rights of the claimants, and for a bonus agreed to refer the Armstrong claim to arbitration. There is some plausibility in this view. It was on this point that I concurred in the judgment of this court, heretofore rendered, directing the taking of testimony in this case. If the United States had compromised the claim, the act would, as I have shown, have been obligatory upon the claimants. But there was no compromise. And so if they had parted with the claim for a consideration, the act would in like manner have been valid; but there would have resulted an obligation on the part of the United States either to account for the consideration or to compensate the claimants."

But in conclusion Judge Scarburg candidly admitted that, although the claimants had strictly no legal remedy, they were entitled to relief in equity, and said:

"It may be true that the claimants are entitled to recover on other grounds, but this is a matter for Congress to consider, and Congress will doubtless do justice to the claimants. (Opinion in Ho. Rep., Court of Claims, pp. 163 and 166.)"

It would seem impossible to force any other construction upon the language used in the proposition of Portugal to refer this claim to arbitration (already cited) than that there was a complete compromise, and which was of itself the very basis of the treaty. The *bona-fide* consideration received by this government for consenting to arbitrate this case, in violation of the pledged national honor not to do so, was the payment by Portugal of a number of claims, "without reference to their justice or injustice, but *pro bono pacis*," and which created a legal responsibility on the part of this government that cannot be evaded or denied. (Letter of Count Tojal to Mr. Clay, 6th July, 1850.)

The Supreme Court of the United States decided in the cases of *Ware vs. Hylton* (3 Dallas, 199 and 245) and the schooner *Peggy* (1 Cranch, 103), that private rights may be sacrificed by treaty, *though the government will be bound to make compensation and indemnity to the individuals whose rights have thus been surrendered*.

In the case of the northeastern boundary line, submitted to arbitration by treaty between the United States and Great Britain, this government did not act without first consulting the States of Massachusetts and Maine, and providing for the appointment of commissioners to be present at the negotiation.

In the case of the *Baron de Bode vs. Regina* (16 Eng. L. and Eq. Reports, p. 23), the lord chancellor of England held that, "It is admitted law that if the subject of a country is spoliated by a foreign government he is entitled to obtain redress through the means of his own government. But if from *weakness, timidity, or any other cause*, on the part of his own government, no redress is obtained from the foreigner, then he has a claim against his own country."

In *Farnham vs. Brooks*, 9 Pickering's reports, 239, Mr. Justice Parker, one of the most eminent of American jurists, recognizes the above rule, and held that in such cases there rests "an obligation on the Government of the United States to procure redress for its citizens, or itself to reimburse them."

Thus, in any view of this claim, whether considered on legal or equitable grounds, no case could be presented to Congress which appeals so strongly to its sense of honor and justice. For it will be perceived that while a majority of the Court of Claims decided adversely against the claimants on the *law* of the case, and upon the presumption that all the evidence was before the arbiter (which subsequently *was proved not to be the case*), the opinion of the majority of the court is in favor of the claimants on the *equity* side of this claim.

"On examination of this report (of the Court of Claims) it appears that at the first hearing the court sustained the claim of the petitioners as valid against the government, and directed that evidence should be taken to show the amount due, one of the judges dissenting.

"On a further hearing of the case on such evidence, one of the judges theretofore in

the majority reconsidered and reversed his opinion, and judgment was then rendered adversely to the claim; the ground then assumed being that on proofs no claim in law was established against the United States, and that the claim should be addressed only to the liberality and equity of Congress.

"On examination of this report of the Court of Claims it would appear that the court assumed that certain proofs had been laid by the Government of the United States before the arbitrator which materially affected his award, but which it now clearly appears was a mistake, and that the proofs in question were not before him when the award was made.

"The facts appear to be these: By the convention with Portugal, pursuant to which this claim was referred to the arbitrament of the Republic of France, it was stipulated that all the correspondence between the Governments of Portugal and the United States respecting this claim should, by the parties to the treaty, be laid before the arbitrator. In doing this it further appears that, by some misapprehension, a part of this correspondence, being that which first arose in the years 1814-15, and conducted at Rio de Janeiro (where the Government of Portugal then resided), was omitted, and in which the last-named government admitted, by necessary implications, its liability to the claimants.

"It is now shown that the evidence of such omission had been communicated by the Secretary of State to the solicitor of the Court of Claims prior to the judgment of that court in the case, but for some reason had not been laid before the court; while both the existence of such proofs and the omission to adduce them before the arbitrator was necessarily unknown to the claimants, NOR WERE THESE FACTS DISCOVERED UNTIL AFTER THE DECISION OF THE COURT.

"In proof of this, the committee append to this report the copy of the letter of Mr. Marcy to Mr. Blair, solicitor of the Court of Claims, dated 20th November, 1855, with the papers accompanying it. There is a descriptive list of the correspondence that was laid before the arbitrator, and this correspondence of 1814 and 1815 is not among them.

"On the whole, the committee, on further examination, again concur in their report, before adverted to, of March 10, 1854, in favor of this claim, and make the same a part of this report; and on the proofs as to the amount due, established before the Court of Claims and set forth in its report (pages 149 and 150), report a bill for the relief of the claimants.

"The proofs before the Court of Claims show:

"The value of the vessel at.....	\$43,000
"Loss of officers and men.....	27,739

70,739"

The bill passed the Senate at the second session of the Thirty-fifth Congress by a vote of 28 yeas to 11 nays, but was lost in the House on the last night of the session for want of two of a quorum, though a large majority voted for the bill.

It is proper to add that at the third session of the Thirty-seventh Congress a resolution passed Congress, approved March 3, 1863, confirming the adverse report of the Court of Claims in this case, without any knowledge of the previous action of the Senate, which at that time was evidently not understood, but which in no manner affects the rights of the claimants.

As the amount demanded is simply for the actual value of the loss of the vessel and armament and for the loss sustained by the officers and crew, without regard to the great and important services rendered by them to their country, it is respectfully submitted that, in view of all the facts, this claim be presented to Congress, with a recommendation that an appropriation be made to pay the claimants.

SAM. C. REID,
In behalf of the Claimants.

WASHINGTON, D. C., January 27, 1879.

DEPARTMENT OF STATE.

A true copy.

SEVELLON A. BROWN,
Chief Clerk.

Memorial of Sam. C. Reid in behalf of the captain, owners, officers, and crew of the United States private armed brig General Armstrong, their heirs, executors, administrators, or assigns.

To the honorable the Congress of the United States in Senate and House of Representatives convened :

The memorial of Sam. C. Reid, in behalf of the captain, owners, officers, and crew of the late United States private armed brig General Armstrong, their heirs, executors, administrators, or assigns, respectfully represents :

CHARACTER OF THE CASE.

This case is without a precedent or a parallel, and appeals directly to the national honor, gratitude, patriotism, and equity of Congress.

It was originally a claim prosecuted by the Government of the United States for a long series of years against the Government of Portugal for permitting the violation of its neutrality by a British squadron in attacking and destroying the United States private armed brig General Armstrong, in the port of Fayal, one of the Azore Islands, during the war with Great Britain in 1814.

The gallant defense made by the General Armstrong is the most unparalleled and heroic naval action to be found in modern or ancient history.

It was the cause of saving New Orleans from the grasp of England, by crippling and delaying a part of the British fleet sent to capture it.

The diplomatic correspondence between Portugal and England, and between the United States and Portugal; the peremptory demand made by this government on Portugal, under President Taylor, for this claim, supported by the presence of an American frigate in the River Tagus; the subsequent retraction on the part of the United States, in violation of the pledged national honor, and the sacrifice of the rights of the claimants by a treaty with Portugal, referring the case to arbitration; the refusal of this government to allow the claimants to be represented by our minister; or to submit any argument in their behalf; the suppression of their most important evidence, showing the previous voluntary admissions and acknowledgment of Portugal's liability to the United States, and the confession and apology of England to Portugal; the reference of the case to Louis Napoleon, President of France, as arbitrator, and his partial and atrocious decision, as Emperor of France, against the claimants; the debates in Congress; the subsequent reference of the case to the Court of Claims; the decision in favor of the claimants by Chief Justice Gilechrist; the reversal of the opinion of the court, on a rehearing, *upon the law of the case*, but admitted on the ground of equity; the discovery of the suppression of material evidence for the claimants by the United States solicitor; the confirmation of the original decision of the court by the United States Senate; its passage of a bill for the payment of the claimants by a vote of 23 to 11, and the House passing the same by a large majority, and which only failed for want of two of a quorum, altogether make up one of the most remarkable and extraordinary cases of delay, wrong, and injustice ever presented to Congress.

THE EVIDENCE.

The principal facts of this case are verified by the following official documents, containing the executive, legislative, and judicial action thereon:

1st. The diplomatic correspondence between Portugal and England, and the United States and Portugal, from 1814 to 1844, contained in Senate Doc. No. 14, first session Twenty-ninth Congress; and from 1849 to 1851, in House Ex. Doc. No. 53, first session Thirty-second Congress.

2d. The treaty between the United States and Portugal of the 26th February, 1851, submitting this claim to arbitration.

3d. The award of Louis Napoleon, communicated in Senate Ex. Doc. No. 24, second session Thirty-second Congress.

4th. Memorial of Sam. C. Reid, jr., in behalf of the claimants, accompanied by the argument refused to be submitted by the Department of State to the arbitrator (Senate Mis. Doc. No. 14, first session Thirty-third Congress).

5th. Unanimous report of the Senate Committee on Foreign Relations, No. 157, and of the House Committee on Foreign Affairs, No. 139, first session Thirty-third Congress, in favor of the claimants, incorporated in the report of the Court of Claims.

6th. Debates of the Senate, second session Thirty-third Congress (Congressional Globe, 27th January and 3d February, 1855).

7th. Report of the Court of Claims, Senate Mis. Doc. No. 142, and House Doc. No. 159, first session Thirty-fifth Congress, with the evidence, arguments, and decisions.

8th. The unanimous report of the Committee on Foreign Relations, No. 194, first session Thirty-fifth Congress, on the report of the Court of Claims, accompanied by a bill for the relief of the claimants.

THE BATTLE OF FAYAL.

From these documents it appears that on the night of the 26th and 27th of September, 1814, the American private armed brig General Armstrong, commanded by Capt. Sam. C. Reid, while at anchor in the neutral port of Fayal, belonging to the dominions of Portugal, was attacked by the gunboats of a large British squadron, commanded by Commodore Lloyd, in violation of the laws of neutrality. The squadron consisted of His Britannic Majesty's ship-of-the-line Plantagenet, of 74 guns; the frigate Rota, of 44 guns; and the brig Carnation, of 18 guns, making a total force of 136 guns and about 2,000 men and officers. The General Armstrong carried but 7 guns and 90 men including officers. The first attack was made about 8 p. m., it being a bright moonlight night, by four armed boats containing about 40 men each. As they approached Captain Reid hailed them repeatedly and warned them to keep off, to which they paid no attention, but rapidly pulled alongside and attempted to board, when Captain Reid opened fire, killing and wounding a large number of their men. The boats returned the fire almost immediately, killing one man, and wounding the first lieutenant of the Armstrong. The boats then retreated, when about midnight the British renewed the attack with fourteen boats, containing over 400 men, which ended in their total defeat with great slaughter, and the partial destruction of their boats.

At daylight on the morning of the 27th September the enemy's brig Carnation, 18 guns, approached the Armstrong within gunshot, and opened a heavy fire with all her force, discharging several broadsides. The Armstrong most spiritedly returned the fire, when, the enemy's brig having received a shot in her hull, her rigging much cut, and her foretopmast wounded, she hauled off. Captain Reid, perceiving that further resistance would be unavailing, then ordered the Armstrong to be scuttled, to prevent the enemy from getting her off, and went ashore with his officers and crew. The enemy soon after boarded her and set her on fire, which ended in her destruction.

AN ENGLISH REPORT.

An English report of this battle, written by an eye-witness, in a letter dated October 15, 1814, signed "H. K. F.," to William Cobbett, esq., at London, gives the following thrilling account:

" * * * The authorities all considered the American privateer perfectly secure, and that His Majesty's officers were too well acquainted with the respect due to a neutral port to molest her; but, to the great surprise of every one, about nine in the evening, four boats were dispatched, armed and manned, from His Majesty's ships, for the purpose of cutting her out. It being about full moon, the night perfectly clear and calm, we could see every movement made. The boats approached with rapidity toward her, when, it appears, the captain of the privateer hailed them and told them to keep off, several times. They, notwithstanding, pushed on, and were in the act of boarding before any defense was made by the privateer. A warm contest ensued on both sides. The boats were finally repulsed with great loss.

"After the first attack all the inhabitants were gathered about the walls, expecting a renewal of the fight. At midnight fourteen launches were discovered to be coming in rotation for the purpose. When they got within gunshot, a tremendous and effectual discharge was made from the privateer, which threw the boats into confusion. They now returned a spirited fire, but the privateer kept up so continual a discharge it was almost impossible for the boats to make any progress. They finally succeeded, after immense loss, to get alongside of her, and attempted to board at every quarter, cheered by the officers with a shout of 'No quarter,' which we could distinctly hear, as well as their shrieks and cries. The termination was near about a total massacre. Three of the boats were sunk, and but one poor solitary officer escaped death in a boat that contained fifty souls. He was wounded. The Americans fought with great firmness. Some of the boats were left without a single man to row them; others with three and four. The most that any one returned with was about ten. Several boats floated ashore full of dead bodies. With great reluctance I state that they were manned with picked men, and commanded by the first, second, third, and fourth lieutenants of the Plantagenet; first, second, third, and fourth ditto of the frigate and the first officer of the brig, together with a great number of midshipmen. Our whole force exceeded four hundred men. But three officers escaped, two of whom are wounded. This bloody and unfortunate contest lasted about forty minutes. Nothing more was attempted until daylight next morning, when the Carnation hauled in alongside and engaged her. The privateer still continued to make a most gallant defense. These veterans reminded me of Lawrence's dying words of the Chesapeake, 'Don't give up the ship.' The Carnation lost one of her topmasts and her yards were shot away. She was much cut up in her rigging and received several shots in her hull. This obliged her to haul off to repair and to cease firing. The Americans now finding their principal gun (Long Tom) and several others dismounted, deemed it folly to think of saving

her against so superior a force. They therefore scuttled her and went ashore. Two boats' crews were soon after dispatched from our vessels, which went on board, took out some provisions, and set her on fire.

"For three days after we were employed in burying the dead that washed on shore in the surf. The number of British killed exceeds 120, and 90 wounded. The enemy, to the surprise of mankind, lost but two killed and seven wounded. We may well say, 'God deliver us from our enemies,' if this is the way the Americans fight.

"After burning the privateer, Commodore Lloyd made a demand on the governor to deliver up the Americans as his prisoners; which the governor refused. He threatened to send 500 men on shore and take them by force. The Americans immediately retired, with their arms, to an old Gothic convent, knocked away the adjoining drawbridge, and determined to defend themselves to the last. The commodore, however, thought better than to send his men." * * *

Thus, after a defense unparalleled in the history of naval warfare, the Americans sustained a loss of only two killed and seven wounded, while the loss in killed and wounded on the part of the enemy was between two and three hundred. The squadron was detained ten days at Fayal repairing damages and in burying their dead. Two sloops of war, the *Thais* and *Calypso*, which arrived two days afterwards, were sent back to England with their wounded.

HOW NEW ORLEANS WAS SAVED FROM CAPTURE.

It further appears that Lloyd's squadron constituted a part of the expedition then concentrating at Negril Bay, Jamaica, for the capture and conquest of New Orleans, and it is shown that the attempted seizure of the *Armstrong* by Lloyd was to make her a useful adjunct in that expedition.

After the burning of Washington, on the 24th of August, 1814, the British fleet, commanded by Sir Admiral Cochrane, sailed from the Chesapeake on the 6th of October for Negril Bay, Jamaica, to concentrate with the transports and troop-ships of Generals Keane and Pakenham, and await re-enforcements from England before proceeding to New Orleans. Lloyd's squadron did not arrive at Jamaica until the 19th of November, and the fleet did not leave for New Orleans until the 26th of November, 1814.

In "A Narrative of the Campaigns of the British Army at Washington, Baltimore, and New Orleans," by a British officer, the author says, in speaking of the secrecy of the expedition: "Trusting, therefore, that the object of the enterprise was unknown to the Americans, Sir Admiral Cochrane and General Keane determined to effect a landing somewhere on the banks of the lake (Borgne), and, pushing on, to take possession of the town before any effectual preparation could be made for its defense."

"When Lloyd arrived and it was told to Sir Admiral Cochrane and Generals Keane and Pakenham what had befallen him, that he had sustained a loss of 200 of his best men, and had in consequence been detained in Fayal ten days, they were exceedingly indignant, and loaded Lloyd with bitter reproaches."

Thus the crippled condition of Lloyd's squadron and their great loss, besides the ten days' detention at Fayal, occasioned a further delay of one week after they had effected a junction with the fleet at Jamaica; consequently the whole fleet was so retarded by means of the gallant defense of the *Armstrong* that it only arrived off the Chantelieur Islands, near the entrance of Lake Borgne, on the 6th of December, 1814, just *four days* after the arrival of General Jackson at New Orleans. It is therefore evident that the heroic action of Captain Reid and his brave officers and crew saved New Orleans from conquest by England; for had the British forces arrived even one week before General Jackson they would have captured the city, which was then utterly defenseless, and who, on these facts afterwards being made known to him, magnanimously conceded that he owed the success of his victory "to the battle of the little brig General *Armstrong* in sustaining the honor of the American flag."

DIPLOMATIC HISTORY OF THE CASE.

On the Government of Portugal being informed by the Portuguese governor of Fayal of the outrage committed by the commander of the British squadron, the Prince Regent of Portugal, on the 22d December, 1814, instructed his minister at London to demand an apology and indemnification from the English Government. The minister of foreign affairs of Portugal, the Marquis de Aguiar, in compliance with instructions from the Prince Regent, addressed a note to Mr. Thomas Sumter, the American minister to Portugal, residing at Rio de Janeiro, dated 23d December, 1814, informing him "that not a moment's delay ensued in causing to be addressed to the British minister at this court the note which is confidentially communicated by a copy to your excellency, at the same time that he has directed his minister at London to make the reclamation so serious an offense requires."

The note addressed to the minister plenipotentiary of Great Britain, Lord Strangford, is dated Palace of Rio de Janeiro, December 22, 1814, and asserts that—

"His Royal Highness, at the same time that he has directed his minister at the court of London to make the strongest representations before the Prince Regent of the United Kingdom of Great Britain, and require satisfaction and indemnification, not only for his subjects, but for the American privateer, *whose security was guaranteed by the safeguard of a neutral port*, orders it to be signified to his excellency Lord Strangford that he may inform his government of the unfavorable impression which the conduct of that British commander has caused in the mind of His Royal Highness," &c.

Mr. Sumter, in his reply of 1st January, 1815, to the letter of the Marquis de Aguiar, expresses his gratification at the promise made on the part of the Portuguese Government to *make or procure* compensation to the claimants; and but for this confession of liability being overlooked for years by the United States Government while blindly prosecuting this claim, it would have been paid by Portugal a quarter of a century ago. Mr. Sumter says: "The undersigned cannot fail to be gratified, and it is presumed his government will be gratified, by the sentiments which His Royal Highness has been pleased to make this the occasion of repeating, respecting the rights and duties of his neutrality. These sentiments, always dignified and valuable in themselves, derive additional dignity and value *from the indication accompanying them of a resolution on his part to make or procure compensation to the injured Americans*; to demand for and give satisfaction to his unfortunate vassals at Fayal, and to pursue until he obtains an ample reparation for so rude and degrading an attack upon his sovereign authority."

This action on the part of Portugal, and the voluntary admission of her liability to the United States, was entirely gratuitous, and made before the American Government had claimed any indemnification. It resulted in the British Government, through Lord Bathurst, minister of foreign affairs, apologizing to Portugal for violating the neutrality of her port, and afterwards, through Lord Castlereagh, paying the reclamation for the damage to Portuguese subjects occasioned by the firing of the British brig *Carnation*, while absolutely refusing indemnification for the loss of the American privateer. (See letters Count Tojal to Mr. Hopkins, p. 34, and Count Tojal to Mr. J. B. Clay, p. 51, in House Ex. Doc. No. 53, first session Thirty-second Congress.)

The note addressed to Mr. Sumter by the minister of foreign affairs of Portugal, with a copy of the note to Lord Strangford, was communicated by Mr. Sumter, in a letter dated Rio, January 8, 1815 (the very day the battle of New Orleans was being fought), to Messrs Adams, Gallatin, Bayard, Clay, and Russell, ministers of the United States at Ghent, and Mr. Crawford, minister of the United States at Paris, for their consideration. (See Mr. Sumter's letter, p. 20, Sen. Doc. 14, first session Twenty-ninth Congress.) The treaty of Ghent was signed on the 24th December, 1814, so that previous to the reception of Mr. Sumter's letter to this government, or to our ministers in Europe, Mr. Madison, President of the United States, on the 3d January, 1815 (five days before the battle of New Orleans), instructed Mr. Monroe, the Secretary of State, to make a demand on Portugal for immediate indemnification, without then being aware that Portugal had already admitted her liability to this government.

THE CAUSE OF THE DELAY ATTENDING THIS CLAIM.

It further appears by the correspondence in Senate Document No. 14 that the claimants never ceased to press their claim upon this government for indemnity against Portugal, from Mr. Madison's administration down to that of President Taylor's; and that their rights against Portugal have been fully acknowledged by every succeeding administration from that of Mr. Madison's. From Mr. Monroe's administration, in 1818, to that of General Jackson's in 1834, a period of sixteen years, the civil wars of Portugal prevented a successful prosecution of this claim, though it was frequently urged on that government in the years 1835, 1836, 1837, and 1838.

During this period Mr. Cavanaugh, the American chargé d'affaires at Lisbon, had repeatedly written for the correspondence had at Rio de Janeiro, in 1814, under General Sumter, in order to enable him to prosecute this claim, and which it seems the Secretary of State was profoundly ignorant of, though it was on file in the Department of State! In 1838 Mr. Cavanaugh again wrote to Mr. Forsyth explaining the cause of the delay in prosecuting the claim, and stated: "I have as yet no information of what was done by General Sumter, our minister at Rio de Janeiro, in 1814 or 1815, who presented the case to the consideration of the Portuguese Government then established there."

On this account it seems no progress was made during the administration of Mr. Van Buren. Finally, in 1843, under Mr. Tyler's administration, after a lapse of nearly thirty years, a reply was received from the Portuguese Government, through her minister of foreign affairs, De Castro, wholly denying the liability of Portugal, and asserting that the Americans, and not the British, had violated the neutrality of her port.

As extraordinary as it may seem, no response was ever made to De Castro's remarkable letter by the Department of State, although for the first time the Americans were charged with the violation of the neutrality of the Portuguese territory, while the accusation had been originally made against England, and for which she had apologized to Portugal.

ABANDONMENT OF THE CLAIM.

The further prosecution of this claim was abandoned in the administration of Mr. Tyler in 1844, Mr. A. P. Upshur, the Secretary of State, having declined to reply to De Castro's letter in a communication to Mr. Reid, stating that "Argument and importunity have been exhausted, and this government can see nothing in the circumstance to justify or warrant it in having recourse to any other weapons."

The claimants then appealed to Congress under the administration of Mr. Polk, in 1845, when, by a resolution of the Senate, all the correspondence in this case was for the first time produced (Senate Doc. No. 14, first session Twenty-ninth Congress), including the original correspondence had at Rio de Janeiro, with the letters of the Marquis de Aguiar to Mr. Sumter and Lord Strangford, containing the voluntary acknowledgment and admission of the liability of Portugal to this government, with the demand upon England for an apology and indemnity, which, after being buried with the dust of over thirty years in the State Department, was at last brought to light!

This correspondence was referred to the Committee on Foreign Relations, who, in their report, No. 349, May 19, 1846, recommended that this case be referred back to the Department of State for further action.

RENEWAL OF ITS PROSECUTION.

No further proceedings were had in this case until 1849, when, under the administration of President Taylor, the demand was renewed on Portugal in behalf of the claimants.*

On the 20th of April, 1849, Mr. John M. Clayton, Secretary of State, under instructions from President Taylor, renewed the prosecution of this case, and in a dispatch to Mr. George W. Hopkins, chargé d'affaires at Lisbon, stated:

"The President considers his accession an auspicious moment to make one more appeal to Portugal. The injustice done us, and the delay of redress, would justify the severest animadversion in speaking of these outrages, which of late seem to have increased in number and magnitude, in a direct proportion to the impunity with which they have been hitherto inflicted. * * * The oldest case of wrong, and the most remarkable, is that of the privateer 'General Armstrong,' Capt. S. C. Reid, destroyed in 1814 by a British squadron, under the guns of the Portuguese fortress which protects the harbor of Fayal, after a defense as gallant and memorable as any act recorded in naval annals. * * *

"It is under these circumstances that the President has resolved to make one more attempt to procure satisfaction for the American claimants, and to assert the national honor; and in this resolve it will be your duty to convince the Portuguese Government that he is in earnest, and will not be turned aside from his purpose. You will impress upon Portugal this idea, that on entering upon the duties of his high office as Chief Magistrate of the United States, the President determined that he would assert the rights of his fellow-citizens upon foreign governments, proceeding upon the principle often avowed by our government, 'to make no demand not founded on justice, and to submit to no wrong.' * * *

"It is in contemplation to lay before Congress the result of this final appeal at an early period of the next session. Should it so happen, unfortunately, that a satisfactory answer be denied or withheld until the arrival of the period for making the proposed communication, the subject will then be submitted as it shall at the time stand to that body; and the Portuguese Government may rest assured that any measures which Congress in their wisdom may decide upon as due to our citizens and country will be faithfully carried out by the Executive.

"In presenting this view of the subject to the consideration of the Portuguese Government, as a frank avowal of A FIXED DETERMINATION ON THE PART OF THE UNITED STATES GOVERNMENT, you will be most careful to represent, at the same time, the extreme anxiety of the President to avoid being forced to suspend or interrupt present diplomatic relations with Portugal, because a recourse to that measure would, most probably, prove to be but the antecedent to reprisals."

In communicating these instructions to the Portuguese Government, through our minister at Lisbon, it was expressly asserted that "the President of the United States sincerely desires to cultivate peace with every nation and people, but he will never

* NOTE.—See abstract of all the diplomatic correspondence in this case, for reference, at page 5.

compromit the dignity of the republic, nor abandon the just rights of his fellow-citizens to attain any end."

A proposition was then made by Portugal to pay a number of other claims preferred by this government, "without regard to their justice or injustice, but only *pro bono pacis*, for the sake of peace, provided the United States would consent to refer this claim to the decision of a third power." This proposition was peremptorily refused, and Mr. Clayton, in his instructions to our minister at Lisbon, Mr. James B. Clay, stated:

"In regard to the reference of this claim to an arbiter, which has been indicated, the President has directed me to say that no such course will, under the circumstances, receive his sanction." * * *

A peremptory demand was then made on the Portuguese Government, supported by the presence of an American frigate in the river Tagus, to receive Mr. Clay in case of refusal. Portugal, aided, supported, and encouraged by England, resisted the claim and Mr. Clay demanded his passports and left the country.

In the mean time the Portuguese minister at Washington, Figanière, had urged upon our government a reference of this case to a third power. Mr. Clayton, in his reply, dated the 30th of April, 1850, stated:

"The undersigned, in conclusion, is compelled to add that, should the Portuguese Government persevere in the refusal to adjust and settle what are believed to be the incontrovertible claims of American citizens upon that government, the only alternative left to the President will be immediately resorted to—the submission of the whole subject to the decision of the Congress of the United States, whose final determination as to the mode of adjustment will have all its appropriate influence upon the course of the Executive."

At this critical juncture, on the 9th of July, 1850, President Taylor died. A new cabinet was formed under Mr. Fillmore, and three days afterward, in violation of the pledged national honor and faith of this government never to consent to submit this claim to the arbitration of a third power, this proposition of Portugal was accepted, without the knowledge or consent of the claimants.

It was held, under the administration of Mr. John Quincy Adams, who concurred in the opinion of Mr. William Wirt, in the cases of Pottenger and Spence, reported in *Opinions of Attorneys-General of the United States*, vol 1, page 486, October, 1825—

"That no executive was authorized to review and unsettle the acts of its predecessor, for otherwise *no question can be considered as finally settled*. Hence it is a rule of action to consider the acts of its predecessors conclusive, so far as the executive is concerned."

The *bonus* offered by Portugal to pay the other claims was accordingly accepted and a treaty made referring this claim to the President of the Republic of France, Louis Napoleon. The claimants then submitted to the Department of State a written argument, with a request that it should be transmitted to our minister at Paris, in order that the rights of the claimants might be fairly presented before the arbiter. Mr. Webster, the Secretary of State, refused the application on the ground that the terms of the treaty (which were silent on the subject) did not permit of it, so that the claimants were deprived of the privilege and debarred of the rights and benefits of being heard and represented.

This claim was submitted to the Prince President on the 1st of November, 1851, upon a question of the *public law* of nations. On the 29th November, 1852, over a year afterward, Louis Napoleon, having become Emperor of France, made an *ex parte* decision against the claimants on the *facts* presented in the affidavit of Lieutenant Fausset, as furnished by the British Government, while all the evidence of the claimants and the previous admissions of both Portugal and England were wholly excluded. The claimants protested against the award, under these circumstances, but it was ratified by the Senate without any knowledge of the subsequent facts developed in this case.

PROCEEDINGS BEFORE CONGRESS.

On the 19th of January, 1854, the claimants again appealed to Congress for relief and filed their memorial, with the argument submitted, to the Department of State on the 7th of July, 1851, the request to forward which to our minister at Paris had been refused. (See Senate Mis. Doc. 14, first session, Thirty-third Congress.) The Committee on Foreign Relations of the Senate, to whom the memorial was referred, unanimously reported in their favor on the 10th of March, 1854 (see Report No. 157), and said:

"Under all the peculiar circumstances of the case, the committee are of opinion that the claimants are justly entitled to relief on strict legal principles, and even were their convictions on the subject less decided than they are, they would find in the heroic conduct of Captain Reid and his gallant crew strong inducements to give them the benefit of their doubts. * * *

"There can be no doubt that if he had suffered himself to be captured without re-

sistance, full pecuniary satisfaction would long since have been accorded by Portugal to the claimants. Shall we refuse it because he has added to our naval history one of its most brilliant pages?"

The Committee on Foreign Affairs of the House, on the 29th of May, 1854 (see Report No. 139), also reported unanimously in favor of the claimants, and said:

"The committee are of the opinion that, under the circumstances, the claimants had a right to consider the repeated recognitions by the different administrations of this government of the justice of their claim, and the determined action upon it by General Taylor, as carrying with it the *force of a judgment in their favor*, which a succeeding administration had no power to review and unsettle.

"The only ground on which the validity of this claim can be questioned is entirely technical in its character, and not to be enforced against the evident demands of justice. It is not a *point of law* that is to be decided, but a principle of *national honor* that is to be vindicated. The gallant sailors who were attacked in the neutral port of Fayal doubted not that they would be protected in their just rights by the full power of their government; and having had repeatedly since the approval of their conduct by the authorities of their country, your committee are of the opinion that a stronger case for redress in equity could scarcely be made out."

On the 26th of January, 1855, this case was fully debated in the Senate. (See Congressional Globe, 27th January, 1855), and by a resolution of both houses of Congress this claim was finally submitted to the Court of Claims, then just established.

PROCEEDINGS BEFORE THE COURT OF CLAIMS.

On the 17th March, 1856, after a thorough investigation of all the facts and evidence before the court and arguments by counsel, Chief Justice Gilchrist delivered the opinion of the court in favor of the claimants, Justice Scaburg concurring, on the following points, Justice Blackford dissenting:

"1st. That the English forces, by sending out their boats with the intention of making an illegal capture, first violated the neutrality of the Portuguese port, and that the Portuguese authorities having failed to protect the Americans, Portugal was bound by the law of nations to make the claimants pecuniary compensation.

"2d. That the United States solemnly rejected the proposition of Portugal to submit this case to arbitration, on the ground that it was not proper under the circumstances, and that the facts would not justify a submission. That afterward a succeeding administration accepted the proposition to arbitrate this claim, in consideration of a bonus, *pro bono pacis*, to pay a number of other claims without reference to their justice or injustice.

"3d. That the case was submitted to arbitration without the knowledge or consent of the claimants; that the important evidence containing the admissions of Portugal and England, in the correspondence had at Rio de Janeiro in 1814 and 1815, with the American minister, and the letter of the British consul at Fayal avowing the intention of the commander of the British squadron, was wholly excluded and omitted, and that the claimants were refused the privilege of being heard by written argument before the authority which was to decide upon their rights.

"4th. That the award of the Emperor Louis Napoleon exceeded the submission, and was void, because it did not settle the matter in dispute and the matter submitted, which was a point of *public law*, but determined the case on a question of *fact* not submitted."

In asserting the liability of this government to the claimants, upon the mutual obligations existing between the government and its citizens, the court said:

But, in conclusion, Judge Scaburg candidly admitted that, although the claimants had strictly no legal remedy, they were entitled to relief in equity, and said: "It may be true that the claimants are entitled to recover on *other grounds*; but this is a matter for Congress to consider, and Congress will doubtless do justice to the claimants." (Opinion in Ho. Rep., Court of Claims, pp. 163 and 166.)

It would seem impossible to force any other construction upon the language used in the proposition of Portugal to refer this claim to arbitration (already cited) than that there was a complete compromise, and which was of itself the very basis of the treaty; the *bona-fide* consideration received by this government for *consenting* to arbitrate this case, in violation of the pledged national honor not to do so, was the payment by Portugal of a number of claims, "without reference to their justice or injustice, but *pro bono pacis*," and which created a legal responsibility on the part of this government that cannot be evaded or denied. (See letter of Count Tojal, 6th July, 1850, to Mr. Clay, in abstract of the correspondence, p. 25.)

The Supreme Court of the United States decided in the cases of *Ware vs. Hylton* (3 Dallas, 199 and 245) and the schooner *Peggy* (1 Cranch, 103), that private rights may be sacrificed by treaty, though the government will be bound to make compensation and indemnity to the individuals whose rights have thus been surrendered.

In the case of the Northeastern boundary line, submitted to arbitration by treaty

between the United States and Great Britain, this government did not act without first consulting the States of Massachusetts and Maine, and providing for the appointment of commissioners to be present at the negotiation.

In the case of the *Baron de Bode vs. Regina*, 16 Eng. L. and Eq. Reports, p. 33, the lord chancellor of England held that, "It is admitted law that if the subject of a country is spoliated by a foreign government he is entitled to obtain redress through the means of his own government. But if from weakness, timidity, or any other cause on the part of his own government no redress is obtained from the foreigner, then he has a claim against his own country."

In *Farnham vs. Brooks*, 9 Pickering's Reports, 239, Mr. Justice Parker, one of the most eminent of American jurists, recognizes the above rule, and held that in such cases there rests "an obligation on the Government of the United States to procure redress for its citizens, or itself to reimburse them."

Thus, in any view of this claim, whether considered on legal or equitable grounds, no case could be presented to Congress which appeals so strongly to its sense of honor and justice. For it will be perceived that while a majority of the Court of Claims decided adversely against the claimants on the law of the case, and upon the presumption that all the evidence was before the arbiter (which subsequently was proved not to be the case), the opinion of the majority of the court is in favor of the claimants on the equity side of this claim.

OPINION OF BARON DE CUSSY.

It is worthy of note, and as illustrating the unjust award of Louis Napoleon, that the Baron Ferdinand de Cussy, formerly consul-general of France, and one of the most distinguished writers on international law, in his standard work on "Phases and Celebrated Causes of Maritime Rights of Nations," fully reviews this case, and in vol. 2, p. 82, edition of 1856, says:

"It is hardly possible to admit that the American privateer could have been so foolhardy as to commit the first hostilities against three ships of war of the British navy, and that she had been the first, under these circumstances, to violate the neutrality of the port:

"But admitting even that, in consequence of a misunderstanding, a musket was fired from the American vessel, did not the three ships of the English navy overstep all bounds in their vengeance in burning the American privateer in a neutral port, while under the batteries, which remained silent, of the fortress of Fayal?

"In this affair, as well as that of the taking of the frigate *La Modeste* in the port of Genoa, there was a brutal violation of all principle on the part of the British navy, and a deplorable inaction on the part of the territorial authorities."

This confirmation of the *public law of nations* by one of the most learned jurists of France, published four years after the iniquitous award of Louis Napoleon, is a sad commentary upon the injustice suffered by the claimants from the injudicious action of this government in submitting the case to arbitration.

As the amount demanded is simply for the actual value of the loss of the vessel and armament and for the loss sustained by the officers and crew, without regard to the great and important services rendered by them to their country, the committee is respectfully asked to report a bill for the claimants in accordance with the actual sum proved before the Court of Claims.

All of which is respectfully submitted.

SAM. C. REID,
In behalf of the Claimants.

WASHINGTON, D. C., April 23, 1870.

[35th Congress, 1st Session. Senate Rep. Com. No. 194.]

Mr. MASON made the following report, to accompany bill S. 273:

The Committee on Foreign Relations, to whom was referred the report from the Court of Claims in the case of the "claimants of the brig General Armstrong against the United States," have had the same under consideration, and now report:

That at the first session of the Thirty-third Congress the Committee on Foreign Relations of the Senate, to whom the petition was referred, made a report, accompanied by a bill, for the relief of the petitioners (Report No. 157, Senate bill 263). The case was subsequently referred to the Court of Claims, both by the Senate and House of Representatives.

The case now comes before this committee on the report of the Court of Claims,

(Mis. Doc. No. 142, 1st session 35th Congress.) On examination of this report it appears that, at the first hearing, that court sustained the claim of the petitioners as valid against the government, and directed that evidence should be taken to show the amount due, one of the judges dissenting.

On a further hearing of the case on such evidence, one of the judges, theretofore in the majority, reconsidered and reversed his opinion, and judgment was then rendered adversely to the claim—the ground then assumed being that on the proofs no claim in law was established against the United States, and that the claim could be addressed only to the liberality and equity of Congress.

On examination of this report from the Court of Claims, it would appear that the court assumed that certain proofs had been laid by the government of the United States before the arbitrator which might materially have affected his award, but which now clearly appears was a mistake, and that the proofs in question were not before him when the award was made.

The facts appear to be these: By the convention with Portugal, pursuant to which this claim was referred to the arbitrament of the Republic of France, it was stipulated that all the correspondence between the government of Portugal and the United States respecting this claim should, by the parties to the treaty, be laid before the arbitrator. In doing this it further appears that, by some misapprehension, a part of this correspondence, being that which first arose in the years 1814-'15, and conducted at Rio de Janeiro (where the government of Portugal then resided), was omitted, and in which the last-named government admitted, by necessary implication, its liability to the claimants.

It is now shown that the evidence of such omission had been communicated by the Secretary of State to the solicitor of the Court of Claims prior to the judgment of that court in the case, but for some reason had not been laid before the court; whilst both the existence of such proofs and the omission to adduce them before the arbitrator was necessarily unknown to the claimants, nor were these facts discovered until after the decision of the court.

In proof of this, the committee append to this report a copy of the letter of Mr. Marcy to Mr. Blair, solicitor of the Court of Claims, dated 20th November, 1855, with the papers accompanying it. There is a descriptive list of the correspondence that was laid before the arbitrator, and this correspondence of 1814 and 1815 is not amongst them.

It was contended in the argument on the part of the government that, even conceding that this last-named correspondence was not before the arbitrator, still no injury could have resulted to the claimants, because all the material facts contained in it were referred to or otherwise cited in so much of the correspondence as was exhibited. Still, the committee are of opinion that the failure to exhibit it, as required by the convention, is a matter of just complaint by the claimants, because, amongst other reasons, it cannot be known what inference or conclusions might be drawn by the arbitrator by reason of its absence.

Nor do the committee mean to say that, had that evidence been before the court, it would have made a clear case of demand in law against the government; but they advert to it as a further equitable consideration in favor of the claimants.

On the whole, the committee, on further examination, again concur in their report, before adverted to, of March 10, 1854, in favor of this claim, and make the same a part of this report; and on the proofs as to the amount due, established before the Court of Claims, and set forth in its report, pages 149 and 150, report a bill for the relief of the claimants.

The proofs before the Court of Claims show:

The value of the vessel at	\$43,000
Loss of officers and men	27,739
	<hr/>
From which is deducted—	70,739
Amount paid heretofore as prize money to officers and men	10,000
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	60,739
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UNITED STATES OF AMERICA.—DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I certify that the papers hereunto annexed are true copies from the records and of the archives of this department.

In testimony whereof, I, Lewis Cass, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State [L. s.] to be affixed. Done at the city of Washington, this 29th day of January, A. D. 1858, and of the Independence of the United States of America the 82d.

LEWIS CASS.

*Mr. Marcy to Mr. Blair.*DEPARTMENT OF STATE,
Washington, November 20, 1855.

SIR: I have to acknowledge the receipt of your letter of yesterday, relative to the claim in the case of the General Armstrong; and with a view to enable you to repel the statement that the correspondence upon the subject was not duly laid before the arbiter, an extract from a dispatch of Mr. Rives to this department, and a copy of the papers to which it refers, is herewith inclosed.

I am, sir, very respectfully, your obedient servant,

W. L. MARCY.

M. BLAIR, Esq.,
Solicitor of the Court of Claims, Washington.

Mr. Rives to Mr. Webster.

[Extract.]

No. 141.]

LEGATION OF THE UNITED STATES,
Paris, April 7, 1852.

SIR: In my dispatch No. 132 I mentioned to you that the correspondence between the Government of the United States and that of Portugal, on the subject of the reclamation in the case of the privateer brig General Armstrong, had been forwarded from Lisbon to the Portuguese minister here for the purpose of being laid by the representatives of both governments before the President of the French Republic as arbiter, in pursuance of the convention of February 26, 1851. The minister of Portugal retained the correspondence in his possession till about a fortnight ago, in order to enable him to complete the copy and translation he wished to make. He then communicated it to me, and as I had never had an opportunity of making myself acquainted with the merits of the question, I retained the correspondence long enough to enable me to read the whole of it with attention, so that I might be in a position to give explanations, if any should be called for in the progress of the arbitration. Having completed the perusal of the papers, and finding them all duly authenticated by the signature of Mr. Haddock, chargé d'affaires of the United States at Lisbon, with that of the person empowered to do so on behalf of the Portuguese Government, I proceeded, under the instructions heretofore given by the Department of State, and in conjunction with Count Azanhaga, the Portuguese minister here, to communicate them to the minister of foreign affairs, to be laid before the President of the French Republic, as arbiter chosen by the two governments. A copy of the note addressed by me to the minister of foreign affairs is herewith inclosed. A note of the same tenor was, at the same time, addressed to the minister of foreign affairs by Count Azanhaga. I inclose also a copy of the list of papers communicated, as made out at Lisbon, and signed by Mr. Haddock and the Portuguese minister of foreign affairs. * * *

I have the honor to be, &c.,

W. C. RIVES.

Hon. DANIEL WEBSTER,
Secretary of State.

LEGATION DES ÉTATS UNIS,
Paris, April 3, 1852.

The undersigned, envoy extraordinary and minister plenipotentiary of the United States, has the honor, in conjunction with the Comte Azanhaga, envoy extraordinary and minister plenipotentiary of her most faithful Majesty the Queen of Portugal, to communicate herewith to his excellency the Marquis de Turgot, minister of foreign affairs, the accompanying series of papers, duly authenticated and regularly numbered from 1 to 21, being the correspondence which has passed between their respective governments on the subject of the reclamation in the case of the American privateer brig the General Armstrong.

The two contracting parties having engaged, by the third article of the convention entered into between them on the 26th day of February, 1851, to lay this correspondence before the arbiter who should be chosen by them to decide the claim in question, and the prince President of the French Republic having been pleased to accept the office of arbiter, conferred upon him by the choice of both parties, the accompanying

papers are now communicated, in pursuance of the said convention, to be laid before him for his consideration and decision on the matter in controversy.

The undersigned prays his excellency the minister of foreign affairs to accept the renewed assurances of his most distinguished consideration.

W. C. RIVES.

His Excellency le MARQUIS DE TURGOT,
Minister of Foreign Affairs.

Correspondencia havide entre o Ministro dos Negocios Estrangerios de S. M. F. so represent ante dos Unidos d'America sin Liebor acerca or reclamacio do corsario General Armstrong.

- No. 1.—Note de Mr. Kavanagh, de 17 de Fevereiro, de 1837, com trez documentoz, A, B, C.
 - No. 2.—Note de Mr. Washington Barrow, de 25 de Mais, de 1842.
 - No. 3.—Nore de Mr. Washington Barrow, de 10 d'Octubro, de 1842, com trez documentoz, A, B, C.
 - No. 4.—Note de Ministro dos Negocios Estrangerios, de 3d Agosto, 1843.
 - No. 5.—Note de Mr. Hopkins, de 28 de Julho, de 1847.
 - No. 6.—Note de Ministro dos Negocios Estrangerios, de 29 de Septembro, de 1847, e un documento.
 - No. 7.—Note de Mr. James B. Clay, de 2 de Novembro, de 1847.
 - No. 8.—Note dos Negocios Estrangerios, de 9 de Marco, de 1850.
 - No. 9.—Note de Mr. Clay, de 15 de Marco, de 1850.
 - No. 10.—Note de Ministro do Negocios Estrangerios, de 15 d'Abril, de 1850.
 - No. 11.—Note de Mr. Clay, de 24 d'Abril, de 1850.
 - No. 12.—Note de Ministro do Negocios Estrangerios, de 15 de Mais, de 1850.
 - No. 13.—Note de Mr. Clay, de 16 de Mais, de 1850.
 - No. 14.—Extracto du note de Mr. Clay, de 21 Junho, de 1850.
 - No. 15.—Note de Ministro dos Negocios Estrangerios, de 2 Julho, 1850.
 - No. 16.—Extracto du note de Mr. Clay, de 2 de Julho, de 1850.
 - No. 17.—Extracto du note de Ministro dos Negocios Estrangerios, de 6 de Julho, 1850.
 - No. 18.—Extracto du note de Mr. Clay, de 7 de Julho, de 1850.
 - No. 19.—Extracto du note de Ministro dos Negocios Estrangerios, de 10 de Julho, de 1850.
 - No. 20.—Note de Mr. Clay, de 11 de Julho, de 1850.
 - No. 21.—Note de Ministro dos Negocios Estrangerios, de 13 de Julho, 1850.
- EMILIO ACHILLES MONTENERDE,
Secretario d'Estado dos Negocios Estrangerios um 7 de Janeiro, de 1852.
CHARLES B. HADDOCK,
Chargé d'Affaires of the United States of America.

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